

NORTHERN MICHIGAN EXPLORATION CO.

IBLA 87-584

Decided April 23, 1990

Appeal from a decision of the Eastern States Office, Bureau of Land Management, dismissing a protest of the survey of an island previously omitted from survey. ES 7050.

Affirmed.

1. Boundaries--Navigable Waters--Public Lands: Riparian Rights--Surveys of Public Lands: Omitted Lands

An unsurveyed island, whether located in navigable or non-navigable waters, remains public domain, does not pass with the bed under the water to a state upon statehood or convey with a grant of riparian land, and may be surveyed and disposed of by the United States.

2. Boundaries--Conveyances: Exceptions--Navigable Waters--Patents of Public Lands--Surveys of Public Lands: Omitted Lands

A railroad patent to the State of Michigan describing "all of section one" does not convey an unsurveyed island within the meander lines of a lake, whether navigable or non-navigable, located within sec. 1, and the United States may properly survey such island.

APPEARANCES: Richard N. LaFlamme, Esq., Jackson, Michigan, for appellant; David S. Hudson, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Northern Michigan Exploration Company (NOMECO) has appealed from a decision of the State Director, Eastern States Office, Bureau of Land Management (BLM), dated June 2, 1987, dismissing NOMECO's protest of the survey of an island in Rennie Lake, T. 26 N., R. 10 W., Michigan Meridian, Michigan. The island at issue, designated as Tract 37 on BLM's plat of survey, is not shown on prior plats of survey of the township or mentioned in the field notes of these early surveys. Prior surveys occurred in 1839, when the exterior boundaries and subdivisional lines of the township were originally surveyed, and in 1852 when the subdivisional lines were resurveyed.

In a Federal Register notice dated May 22, 1986, 51 FR 18844, BLM stated that its plat of survey had been accepted on May 2, 1986, and would be filed in the Eastern States Office on June 30, 1986. Interested parties seeking to protest BLM's determination that Tract 37 was public land of the United States were directed to file such protest by June 30.

Appellant NOMECO filed a timely protest, identifying itself as the lessee of a mineral interest owned by Mr. and Mrs. Wilbur Scheck. 1/ Appellant's protest cited United States v. Chandler-Dunbar Water Power Co., 209 U.S. 447 (1908), for the proposition that a patentee of Government land

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1/ Mr. Scheck also filed a protest, which stated, "I do claim, have record title, and have occupied" Tract 37 since purchasing the island in 1941 from H. J. Ullmann. Scheck maintained that his abstract of title shows that the Grand Rapids & Indiana R.R. Company owned the property in 1891. The Schecks did not appeal the BLM decision denying their protest.

bordering on a navigable waterway takes to the centerline of the waterway, including small unsurveyed islands like Tract 37, between the mainland and centerline. BLM's decision of June 2, 1987, responded that Chandler-Dunbar was distinguishable because the islands at issue there were regarded by the Supreme Court as part of the streambed.

BLM's decision offered additional facts which place its survey in historical context. Fractional sec. 1, the situs of Tract 37, is shown on the Department's 1853 plat of survey to be invaded by the waters of a meandered lake. The official acreage of sec. 1 is reported as 534.26 acres. As noted above, Tract 37 does not appear on this 1853 plat.

Instructions issued by the Surveyor General in 1850 for the States of Ohio, Indiana, and Michigan required deputy surveyors to meander "all lakes and deep ponds, of the area of forty acres and upwards; and all islands suitable for cultivation." C. Albert White, A History of the Rectangular Survey System 368 (emphasis supplied). Subsequent instructions in 1864 advised that survey of "small unsurveyed islands which were omitted when the adjacent lands were surveyed" was authorized if an applicant for survey paid the cost thereof; such islands are "usually of too little value to justify the Government in incurring the expense of survey." Id. at 503.

Current instructions set forth at section 3-122 of The Manual of Instructions for the Survey of the Public Lands of the United States (1973) provide:

Even though the United States has parted with its title to the adjoining mainland, an island in a meandered body of water, navigable or nonnavigable, in continuous existence since the date of the admission of the State into the Union, and omitted from the original survey, remains public land of the United States. As such the island is subject to survey.

Pursuant to special instructions dated July 28, 1985, Cadastral Surveyor Anthony E. Carrow executed the survey of the island at issue. Carrow's plat of survey designated the island as Tract 37 and indicated its area as 0.80 acre. Field notes of this survey concluded that the island was in place "in 1839 when the township was subdivided, in 1837 when the State of Michigan was admitted into the Union and at all subsequent dates and is public land of the United States." 2/

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2/ Appellant states that the evidence supporting the existence of Tract 37 in 1837 is inconclusive at best, but offers no contrary evidence. Appellant refers instead to cases that "establish a presumption that the surveys were accurate when made," which presumption must be overcome by the Government to prevail in its claim that the island was present when the early surveys were made.

BLM's evidence of the existence of the island in 1837 consists of the following:

"The island designated as Tract No. 37, consists of sandy loam rising gradually out of Rennie Lake to an elevation of 3 feet above the normal lake level.

"The island does not fall within the meandered area of the original survey and is surrounded by shallow waters of the lake with a maximum depth of 3 to 5 feet. The lake level is variable depending upon the season and year. At the time of the survey, the lake level appeared to be approximately 1 foot above the normal lake level as evidenced by the escarpment and accompanying timber fringe growth. The nearest mainland bears Southeasterly, 3 chs. dist. over a channel depth of 3 feet. There is no evidence of the presence of old stumps in the channel.

"There are no currents within the lake nor movements of silt laden waters and the island does not appear to have been formed by accretion or the depositing of silt. The island does not appear to have been uncovered since the 1839 original survey by any recession of the lake.

"The timber species on the island are similar to that on the mainland and consist of white pine, red pine, jack pine, birch, and aspen with an understory of aspen, maple, pine, and oak. The size of trees range from 6 to 15 inches in diameter. A boring sample of a red pine, 15 inches diameter shows an approximate age of 45 years. There also appears to be

In its statement of reasons, appellant states that "[a]ll of section one, containing five hundred and thirty-four acres and twenty-six hundredths of an acre" was conveyed by the United States to the State of Michigan by patent dated July 27, 1891. <sup>3/</sup> This conveyance was made pursuant to the Act of June 3, 1856, 11 Stat. 21, <sup>4/</sup> granting to the State every alternate section of land for six sections in width on each side of a railroad to be constructed. By Supplemental List No. 49, Michigan selected the "[w]hole of section 1," T. 26 N., R. 10 W., as an indemnity selection in lieu of lands within the primary limits (i.e., 6 miles) of the railroad. Supplemental List No. 49 was approved and certified by the Secretary of the Interior on June 10, 1864.

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fn.2 (continued)

a few large stump impressions on the island but no stumps were found.

"Local residents all stated that the island had been in existence within their knowledge of the area, the longest being approximately 30 years.

"A map prepared by the Michigan Department of Natural Resources from marginal survey and soundings by Michigan Emergency Conservation work in the winter of 1936-37, show the depths of Rennie Lake and indicate an island separate and distinct from the mainland in the same location as this island.

"From the general characteristics of the island, similar to the opposing mainland, and the lack of evidence that the island was formed by silting action or uncovered by the recession of the lake, it may be presumed that the island was in place in 1839 when the township was subdivided, in 1837 when the State of Michigan was admitted into the Union and at all subsequent dates and is public land of the United States.

"The only evidence of occupancy is an old campfire circle and a pit 5x3 foot square dug on the south side of the island down to the lake level."

(Field notes of the Survey completed Sept. 6, 1985).

In light of the 1850 instructions of the Surveyor General, directing deputy surveyors to meander all islands suitable for cultivation, and in the absence of evidence adduced by appellant, we will not disturb BLM's finding that Tract 37 was in place in 1837 and at all subsequent dates.

<sup>3/</sup> This patent, denoted Railroad Patent No. 10, granted a total of 133,497.53 acres to the State "for the use and benefit of the Grand Rapids and Indiana Railroad Company" (Exh. 2 to BLM Answer, Oct. 1, 1987).

<sup>4/</sup> This Act was amended by the Act of June 7, 1864, 13 Stat. 119, authorizing patents to issue as segments of the railroad were completed.

Shortly after the enabling legislation of June 3, 1856, the Michigan State Legislature appears to have conveyed its interest in the lands described therein to the Grand Rapids & Indiana Railroad Company. 5/ This fact is gleaned from recitations in a warranty deed, recorded September 9, 1891, by which the Railroad, inter alia, conveyed to Jonathan Cobb and William W. Mitchell part of sec. 1. 6/ The record does not further reveal the chain of title from Cobb and Mitchell to H. J. Ullmann, grantor of the Schecks. When in 1941 the Schecks purchased the island from Ullmann, the island was very small, the water was high, and small shrubs grew upon the island, Scheck's protest states.

In its arguments on appeal, appellant refines its protest argument to state:

An analysis of the \* \* \* cases leads to the conclusion that where an island is small and of little apparent value and where there is no indication that its omission from the government's original survey was due to mistake or fraud on the part of the surveyor, the island will be deemed to have passed with a grant of the uplands. This conclusion is even more certain when the island is located in a non-navigable [7/] body of water.

(Statement of Reasons, July 29, 1987, at 6).

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5/ The conveyance was effected by an act of the legislature approved Feb. 14, 1857. See 10 L.D. 676, 677 (1890).

6/ The deed conveys, inter alia, the "East fractional half of the North East fractional quarter, the West fractional half of the North West fractional quarter, North West quarter of the Southwest fractional quarter and Lots 1, 2, 3, 4, 5, and 6 of Section One \* \* \* all being in Town. Twenty-six North of Range ten West."

7/ No determination of the navigability of Rennie Lake has been made by BLM. Such a determination is properly made on the basis of conditions in 1837 when Michigan was admitted to the Union. United States v. Oregon,

In support of this argument, appellant relies heavily upon four cases: Grand Rapids & Indiana R'd Co. v. Butler, 159 U.S. 87 (1895); 8/ Whitaker v. McBride, 197 U.S. 510 (1905); 9/ United States v. Chandler-Dunbar Water Power Co., *supra*; 10/ and Bourgeois v. United States, 545 F.2d 727

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fn. 7 (continued)

295 U.S. 1, 14, 15 (1935). Despite BLM's reticence in making a navigability determination, appellant elsewhere assumes that Rennie Lake is non-navigable. See Statement of Reasons, *supra* at 6.

8/ Butler was a suit to quiet title in an "island" of 2.56 acres that had been omitted from the original survey of lands riparian to the Grand River in Michigan. Plaintiff Butler was the successor-in-interest to Federal patentees of nearby riparian land; the Railroad held a Federal patent to the island at issue, which had been surveyed some 20 years after the original surveys were run.

Citing Hardin v. Jordan, 140 U.S. 371 (1891), the Supreme Court stated that grants by the United States of its public lands bounded on streams and other waters, made without reservation or restriction, are to be construed as to their effect according to the law of the state in which the land lies. Michigan law held that a grant of land bounded by a stream, whether navigable or not, carried with it the bed of the stream to the center of the thread thereof. 159 U.S. at 92-94. Affirming judgment in favor of Butler, the Court stated, "We have no doubt upon the evidence that the circumstances were such at the time of the survey as naturally induced the surveyor to decline to survey this particular spot as an island." *Id.* at 95.

9/ McBride involved a petition by a homesteader to survey a 22-acre island in the Platte River. The Department refused this petition relying on Butler, *supra* note 8, and held that survey and sale of the island was precluded by the fact that the adjacent banks of the river had been surveyed and sold. Looking to Nebraska law, the Supreme Court held that riparian proprietors are the owners of the bed of the stream to the center of the channel. The Court acknowledged that the Government, as original proprietor, has the right to survey and sell any lands, including islands in a river, but that if it omits to survey an island and thereafter refuses to do so, no citizen can overrule the Department, assume that the island ought to have been surveyed, and proceed to homestead it.

10/ Chandler-Dunbar Water Power Company claimed two islands in the navigable Sault St. Marie under a patent from the United States describing riparian land on the river St. Mary. In response to the company's claim, the United States filed a bill in equity to remove this apparent cloud on the Federal title. The bill acknowledged that the bed of the river surrounding the islands passed to Michigan at the time of Statehood, but denied that the islands passed by the patent of neighboring lands. The Supreme Court found the islands to be unsurveyed and of little value and held that the Act offering Michigan admission to the Union did not except these islands from the acknowledged transfer to the State of the streambed surrounding them. If by the law of Michigan the bed of the river or strait

(Ct. Cl. 1976). 11/ Butler is easily distinguished because the evidence

there "left it uncertain whether the so-called island was more than 'a low

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fn. 10 (continued)

would pass to a grantee of the uplands, the Court reasoned, it may be assumed that the islands passed along with the bed. Citing Butler, *supra* at note 8, the Court held that under Michigan law a grant of land bounded by a stream, whether navigable in fact or not, carries with it the bed of the stream to the center of the thread thereof. The claim of the United States was, accordingly, found to be without plausible ground.

11/ Bourgeois was a suit for just compensation to recover the value of an island allegedly appropriated by the United States. Plaintiff claimed to be the successor-in-interest to a Federal patent (1866) of upland riparian to the non-navigable Jewell Lake in Michigan. The island at issue, 6.76 acres, was first surveyed in 1958, having been omitted from the 1846 plat of survey; the 1846 plat did, however, show a meandered Jewell Lake.

In seeking to determine whether the 1866 patent conveyed the island, the Court of Claims distinguished Federal cases involving navigable and non-navigable waters. From these cases, the court drew a further distinction between those involving islands and beds.

Finding no Federal common law on point, the court fashioned a rule based on an analogy to non-navigable water bed cases. These cases held that when land bordering a non-navigable body of water is ceded, the beds pass (unless the intent of the grantor is expressly stated to the contrary) according to state law. Under Michigan law, the court stated, title to the beds passes to the shoreland owners. 545 F.2d at 731. The court, accordingly, held that plaintiff could recover just compensation from the United States upon proof of her title in the upland.

In concluding that cases involving non-navigable water beds were the best analogy to the dispute at hand, the court focused on accessibility to the island. Cases involving islands in navigable waters were rejected because the Government could with impunity cede title to shoreland while retaining access by the navigable water route.

In Olive Wheeler, 108 IBLA 296, 301 (1989), this Board addressed the Bourgeois analysis. Citing Emma S. Peterson, 39 L.D. 566 (1911), which held that an unsurveyed island, whether located in navigable or non-navigable waters, remains public land, the Board stated that it was not persuaded by Bourgeois that there should be a different rule for non-navigable waters. The Board also stated, "It is not the case, as the court in Bourgeois assumed, that such an island was not surveyed because neither the patentee nor the United States 'cared very much about who held title to the island,' 545 F.2d. at 731." The Board pointed out that general instructions for conducting surveys established practical limits on how much should be accomplished. Considerations of expense, difficulty, and the suitability of land for cultivation affect these limits. 108 IBLA at 301 n.8.

We note that Bode v. Rollwitz, 60 Mont. 481, 199 P. 688 (1921), a decision of the Supreme Court of Montana, provided a basis for resolving the dispute in Bourgeois. Bode held that an error in omitting from survey

sand bar, covered a good part of the year with water.'" Scott v. Lattig, 227 U.S. 229, 244 (1913). The "conformation" involved in Butler contrasts vividly with the fast lands identified by BLM as Tract 37. 159 U.S. at 95.

McBride is also easily distinguished because the Government was not a party to that case. As such, the Supreme Court held: "[N]othing we have said is to be construed as a determination of the power of the Government to order a survey of this island or of the rights which would result in case it did make such survey." 197 U.S. at 515.

Chandler-Dunbar involved islands that were "little more than rocks rising very slightly above the level of the water." Id. at 451. Though the acreage of these islands (one island contained "a small fraction of an acre" and the other "a little more than an acre") is similar to that in Tract 37, the Court's citation to Butler and its failure to distinguish United States v. Mission Rock Co., 189 U.S. 391 (1903), 12/ lead to the

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fn. 11 (continued)

an island in the non-navigable Yellowstone River did not divest the United States of title or interpose any obstacle to surveying it at a later time.

12/ Mission Rock Company was sued in ejectment by the United States to recover a tract of land containing 14.69 acres in the navigable San Francisco Bay. At the date of admission of California into the Union, Sept. 9, 1850, the tract consisted of two small rocks or islands (0.14 acre and 0.01 acre in area) and submerged contiguous lands. In 1872 California purported to convey the tract to defendant's predecessor in interest. Later, the tract was improved by filling in portions of the submerged lands and erecting warehouses and wharves thereon. In 1899, President McKinley reserved the two islands permanently for naval purposes.

Recognizing that California acquired dominion over all soils under the tidewaters within State limits, the Supreme Court held that the United States retained ownership of the islands, but no part of the improvements.

conclusion that the islands were regarded as indistinguishable from the bed of the navigable river surrounding them. Tract 37 does not fit such a description.

Bourgeois offers faint support for appellant's position because that case relied upon a theory of access to hold that "if the intent of the grantor is ambiguous and the Government grants shoreland along non-navigable waters, it also passes title to islands according to the law of the state in which the property is located." 545 F.2d at 731. Key to this decision by the U.S. Court of Claims was the notion that if the Government has not reserved an easement in any of the Federal patents of riparian upland, it would have absolutely no way to use an island in a non-navigable lake. No access existing in favor of the Government, title to the island should pass according to state law, the court reasons. Such a view, however, overlooks the Government's power to obtain access by eminent domain. Leo Sheep Co. v. United States, 440 U.S. 668, 680 (1979).

[1] In Scott v. Lattig, supra, Mr. Justice Van Devanter set forth the law applicable to the instant facts. Although Scott involved an omitted island in a navigable river, we have previously held in R.A. Mikelson, 26 IBLA 1, 9 (1976), that Scott applies also to non-navigable bodies of water. Accord, Olive Wheeler, 108 IBLA at 296; Emma Peterson, 39 L.D. at 567. We reiterate that conclusion here and offer our reasons infra. As noted above, no determination of the navigability of Rennie Lake has been made by BLM.

Scott held that a surveyor's error 13/ in omitting an island from survey did not divest the United States of title or interpose any obstacle to surveying the island at a later time. 227 U.S. at 241-42. Scott is important because it clearly distinguished an island from land under water, such as the bed of a stream or lake. This distinction was blurred in Butler and Chandler-Dunbar, two cases relied upon by appellant.

Scott also distinguished the process by which an owner of riparian upland acquired an interest in the adjacent bed; this distinction focused upon the navigability vel non of the body of water. Quoting from Hardin v. Shedd, 190 U.S. 508, 519 (1903), Scott said:

"When land is conveyed by the United States bounded on a nonnavigable lake belonging to it, the grounds for the decision must be quite different from the considerations affecting a conveyance of land bounded on navigable water. In the latter case the land under the water does not belong to the United States, but has passed to the State by its admission to the Union. ... When land under navigable water passes to the riparian proprietor, along with the grant of the shore by the United States, it does not pass by force of the grant alone, because the United States does not own it, but it passes by force of the declaration of the State which does own it that it is attached to the shore."

227 U.S. at 243. This distinction was made in Hardin v. Shedd because the Court feared "that there has been some misapprehension with regard to the point." 190 U.S. at 519.

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13/ Where, as here, it appears that the surveyor omitted Tract 37 from survey in 1852 because of the Surveyor General's instructions ("meander \* \* \* all islands suitable for cultivation"), we hold that Scott applies a fortiori. It may reasonably be inferred that surveys were limited to islands upon which settlement had been, or was likely to be, made; in the absence of these conditions, Federal conveyance by patent was remote and an

In light of the distinctions set forth in Scott, we find no reason to limit the holding there to islands in navigable waters. Bode v. Rollwitz, supra at note 11, reached a similar conclusion. <sup>14/</sup>

[2] NOMECO's other argument on appeal focuses upon the terms of the United States patent to the State of Michigan, dated July 27, 1891. Appellant contends that Tract 37 cannot be public land because this patent purported to convey "[a]ll of section one, containing five-hundred and thirty-four and twenty-six hundredths of an acre" (Statement of Reasons, July 29, 1987, at 4). Because the island is located entirely within sec. 1, the patent, which granted all of sec. 1 to the State, necessarily included the island, NOMECO states. The absence of any mention of the island in the survey does not alter the conclusion that it was conveyed with the balance of sec. 1. Id. at 5.

In response, BLM has cited Northern Pacific Railway Co., 62 I.D. 401 (1955), for the proposition that a United States patent to "all of" a particular section of land does not convey an unsurveyed island within such section. NOMECO replies by stating that Northern Pacific Railway Co.

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immediate survey was, therefore, unnecessary. See Bernard J. Gaffney, A-30327 (Oct. 28, 1965). From these conclusions, we find no basis for an inference that the United States intended to divest itself of an island omitted from survey.

<sup>14/</sup> See Morgenthaler, "Surveys of Riparian Real Property: Omitted Lands Make Rights Precarious," 30 Rocky Mt. Min. L. Inst. 19-30 (1985): "The doctrine of Scott v. Lattig was reinforced by a strikingly similar decision of the Supreme Court three years later, and was quickly recognized as settled law. A 1921 decision of the Montana Supreme Court [Bode v. Rollwitz] acknowledges the rule and correctly characterizes it as applying to navigable and non-navigable waters." (Footnotes omitted).

relied upon two cases, Chapman & Dewey Lumber Co. v. St. Francis Levee District, 232 U.S. 186 (1914), and Lee Wilson & Co. v. United States, 245 U.S. 24 (1917), that are distinguishable from the instant facts. The distinguishing factor, NOMECO observes, is the omission of a reference to "the official plats of survey" in the July 27, 1891, patent to the State of Michigan.

In Chapman & Dewey Lumber Co., the Supreme Court held that a patent for "[t]he whole of the Township (except Section sixteen) \* \* \* according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General" did not convey lands erroneously meandered as a body of water and designated "Sunk Lands" on the official plats. Lands within these meander lines were excluded from survey, the plat and field notes showed. 232 U.S. at 196. The Court reasoned in this way:

Of course, the words in the patent "The whole of the Township (except Section sixteen)" are comprehensive, but they are only one element in the description and must be read in the light of the others. The explanatory words "according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General" constitute another element, and a very important one, for it is a familiar rule that where lands are patented according to such a plat, the notes, lines, landmarks and other particulars appearing thereon become as much a part of the patent and are as much to be considered in determining what it is intended to include as if they were set forth in the patent. \* \* \* The specification of acreage is still another element, and, while of less influence than either of the others, it is yet an aid in ascertaining what was intended, for a purpose to convey upwards of 22,000 acres is hardly consistent with a specification of 13,815.67 acres. \* \* \* Giving to each of these elements its appropriate influence and bearing in mind that the terms of description are all such as are usually employed in designating surveyed lands, we are of opinion that the purpose was to patent the whole of the lands surveyed, except fractional section 16, and not the areas meandered and returned, as shown upon the plat, as bodies of water. That it is now found \* \* \*

that these areas ought not to have been so meandered and returned, but should have been surveyed and returned as land, does not detract from the effect which must be given to the plat in determining what was intended to pass under the patent. [Emphasis supplied.]

Id. at 196-97.

Lee Wilson & Co. involved essentially similar facts: An original plat of survey showed an area of 853.60 acres meandered as a lake, despite the fact that no lake existed. A patent was later issued to the State of Arkansas for "[t]he whole of the township except Section sixteen (16) containing fourteen thousand five hundred and sixty-five acres and three hundredths of an acre, according to the official plats of survey of the said lands returned to the General Land Office, by the Surveyor General." Upon discovering its error, the Department surveyed the 853.60 acres, and homestead entries commenced.

In response to an argument by the State's grantee "[t]hat as the selection made by the State was of Township 12, the exterior bounds of that township became the measure of the State's title irrespective of what was surveyed or unsurveyed within those exterior lines," the Supreme Court found that this argument rested upon a contradictory assumption. 245 U.S. at 30. Such an argument "treats the designation of Township 12 as the measure of the rights conferred and immediately proceeds to exclude from view the criteria by which alone the existence and significance of the

insisted upon designation (Township 12) are to be determined." 15/ Id. (emphasis supplied).

The criteria referred to by the Court are set forth in statute, 16/ regulation, 17/ and the Department's Manual of Instructions for the Survey of the Public Lands of the United States, and embodied in the actual plat of survey and field notes. The notion that a legal description (such as Township 12 or, as here, "all of section one") owes its existence and significance to the survey on the ground 18/ is further developed in United States v. Morrison, 240 U.S. 192, 199 (1916). This case held that "[p]rior to survey, the designated sections were undefined and the lands were unidentified." The impact of survey is succinctly stated by Cox v. Hart, 260 U.S. 427, 436 (1922): "A survey of public lands does not ascertain

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15/ Lee Wilson & Co. is frequently cited for two propositions that are relevant here and deemed "indisputable" because conclusively settled by previous decisions:

"First. Where in a survey of the public domain a body of water or lake is found to exist and is meandered, the result of such meander is to exclude the area from the survey and to cause it as thus separated to become subject to the riparian rights of the respective owners abutting on the meander line in accordance with the laws of the several States. \* \* \*

"Second. But where upon the assumption of the existence of a body of water or lake a meander line is through fraud or error mistakenly run because there is no such body of water, riparian rights do not attach because in the nature of things the condition upon which they depend does not exist and upon the discovery of the mistake it is within the power of the Land Department of the United States to deal with the area which was excluded from the survey, to cause it to be surveyed and to lawfully dispose of it." 245 U.S. at 29 (citation omitted).

16/ 43 U.S.C. §§ 751-774 (1982).

17/ 43 CFR Part 9180.

18/ A patentee of public land takes according to the actual survey on the ground, even though the official survey plat may not show the tract as it is located on the ground or the patent description may be in error as to the course or distance or quantity of land to be conveyed. Robert R. Perry, 87 IBLA 380 (1985); Elmer L. Lowe, 80 IBLA 101 (1984).

boundaries; it creates them." (Emphasis in original.) See also State of Oregon II, 80 IBLA 354, 91 I.D. 212 (1984).

We conclude from Lee Wilson & Co., Morrison, and Hart that a legal description, such as "all of section one," cannot be understood apart from the official plat of survey. For this reason, we hold that the omission from the United States patent to Michigan, dated July 27, 1891, of a reference "to the official plats of survey" does not remove the instant appeal from the principles stated in Chapman & Dewey Lumber Co. and Lee Wilson & Co. 19/

These two cases make clear that the effect of a meander line, such as that run along the margin of Rennie Lake in 1852, is to exclude absolutely from the township the area so meandered. 245 U.S. at 31. A patent for "all of section one," therefore, would not convey land meandered and returned as a body of water. 232 U.S. at 197. In the instant appeal, that land is the island at issue, Tract 37, and accordingly, we hold that this island was not conveyed to the State of Michigan at any time. 20/ BLM's action in surveying this island as public land was proper and infringed upon no rights of appellant.

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19/ Our research reveals two cases, in addition to Northern Pacific Railway Co., where the Department has concluded that a patent to all of a particular section did not convey unsurveyed lands therein. See State of Florida, 17 L.D. 355 (1893), and Utah Power & Light Co., 6 IBLA 79, 79 I.D. 397 (1972). See also Horne v. Smith, 159 U.S. 40, 45 (1895), a case involving an erroneous meander line, for the principle that a "patent conveys only the land which is surveyed."

20/ The State of Michigan apparently agrees. BLM's Answer of Oct. 7, 1987, states at page 10 that "[o]nce made aware of Tract 37's existence, Michigan applied for a grant of Tract 37 under the provisions of 43 U.S.C. § 869 (1982) [the Recreation and Public Purposes Act.]" See 43 U.S.C. § 1721 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Director, Eastern States Office, is affirmed.

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Gail M. Frazier  
Administrative Judge

I concur:

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Franklin D. Arness  
Administrative Judge